

**Remarks/Arguments:**

Claims 1-79 are pending in this application. The Office Action requires that Applicant choose from among claims of Group I (claims 1-10, 23-34, 40-51 and 64-73) or Group II (claims 11-22, 35-39, 52-63 and 74-79). Applicant elects to prosecute Group I (claims 1-10, 23-34, 40-51 and 64-73) without traverse, as so noted in Applicants' provisional election made by telephone on May 9, 2005. Therefore, claims directed to Group II, namely, 11-22, 35-39, 52-63 and 74-79 that were provisionally withdrawn from consideration have been canceled. Applicant expressly reserves the right to file future applications directed to claims 11-22, 35-39, 52-63 and 74-79 without prejudice.

Applicant notes with thanks the Office Action's recognition of the allowable subject matter of claims 6, 33, 34, 45, 50, 51 and 69, as objected to as being dependent on a rejected base claim but allowable if rewritten in independent form. These claims have been rewritten in independent form and are therefore allowable.

Claims 1, 6, 23, 33, 34, 40, 45, 50, 51, 64, 69 have been amended. Therefore, claims 1-10, 23-34, 40-51 and 64-73 remain pending in the application, with claims 11-22, 35-39, 52-63 and 74-79 canceled.

Claims 2, 3, 8-10, 24, 25, 30-32, 41-43, 47-49, 65-67 and 71-73 stand rejected under 35 U.S.C. § 112, second paragraph as indefinite. With respect to this rejection, Applicants note that although the claims may include ranges that exclude others within the same claim, the claims are directed to a claimed composition similar to that discussed in MPEP § 2173.05(c)(II). As stated in this section,

a composition claimed to have a theoretical content greater than 100% (i.e. 20-80% of A, 20-80% of B and 1-25% of C) was not indefinite simply because the claims may be read in theory to include compositions that are impossible in fact to formulate. It was observed that subject matter which cannot exist in fact can neither anticipate nor infringe a claim. *In re Kroekel*, 504 F.2d 1143, 183 USPQ 610 (CCPA 1974).

Therefore, Applicants contend that based on the rationale of the Court of Customs & Patent Appeals, Applicants' claims 2, 3, 8-10, 24, 25, 30-32, 41-43, 47-49, 65-67 and 71-73 are also not indefinite and the rejection of the claims as being indefinite is improper.

Claims 1-4, 7-10, 23-26, 29-32, 40-43, 46-49, 64-67 and 70-73 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,558,571 ("Powers"). Claims 1, 7, 23, 29, 40, 46, 64 and 70 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,588,561 ("Aswell"). Claims 1 and 23 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,306,201 ("Makino"). Claims 23, 27 and 28 stand rejected under 35 U.S.C. § 102(b) as anticipated by Japanese reference, JP 63-277058 ("JP '058"). Claims 1 and 5 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,705,876 ("Ivanov"). Claims 1, 5, 23, 27, 40, 44, 64 and 68 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 4,265,675 ("Tsao"). Applicants respectfully traverse these rejections and submit that independent claims 1, 23, 40 and 64 have been amended to be patentable over the art of record for at least the reasons set forth below.

#### **Features of Claims 1, 23, 40 and 64**

Applicants' invention, as recited by amended independent claim 1, includes at least the following features that are neither disclosed nor suggested by the art of record, namely (as recited in amended claim 1): "An oxygen-absorbing composition consisting essentially of oxidizable iron and a tartrate."

Applicants' invention, as recited by amended independent claim 23, includes at least the following features that are neither disclosed nor suggested by the art of record, namely (as recited in amended claim 23): "An oxygen-absorbing composition comprising an oxidizable iron and a tartrate wherein said composition is free from carbon dioxide generating compounds."

Applicants' invention, as recited by amended independent claim 40, includes at least the following features that are neither disclosed nor suggested by the art of record, namely (as recited in amended claim 40): "An oxygen-absorbing composition consisting essentially of oxidizable iron, a tartrate, and an electrolyte."

Applicants' invention, as recited by amended independent claim 64, includes at least the following features that are neither disclosed nor suggested by the art of record, namely (as recited in amended claim 64): "An oxygen-absorbing composition comprising oxidizable iron, a tartrate, and an electrolyte wherein said composition is free from carbon dioxide generating compounds."

Support for amended claims 1, 23, 40 and 64 can be found in the originally filed application, for example, at page 6, in the first full paragraph and page 2, in the fourth full paragraph.

### **Response to Prior Art Rejections based on Powers**

The Office Action rejects independent claims 1, 23, 40 and 64 as anticipated by Powers. Applicants respectfully submit, however, that the claimed invention is readily distinguishable from that disclosed by Powers. In each of the amended independent claims, either claims 1 and 40 by virtue of the "consisting essentially of" transitional phrase, or claims 23 and 64, by positively reciting that the composition is "free from carbon dioxide generating compounds," Applicants' invention does not include an inhibited carbon dioxide generating compound as is disclosed in Powers. As noted in the Powers specification, "the salient feature of the present composition is the use of an inhibited carbon dioxide generating compound which results in delayed carbon dioxide generation and delayed neutralization of the acid." Thus, while Applicant excludes such a carbon dioxide generating compound from its claims, the Powers reference teaches, discloses and suggests this feature as an important feature of its composition. Therefore, Powers does not anticipate the amended claims of the currently pending application.

### **Response to Prior Art Rejections based on Aswell**

The Office Action rejects independent claims 1 and 23 as anticipated by Aswell. Applicant respectfully submits, however, that the claimed invention is readily distinguishable from that disclosed by the Aswell. As noted above, Applicant's invention, as recited by amended independent claim 1, is a composition consisting essentially of oxidizable iron and a tartrate and as recited by independent claim 23, a composition comprising oxidizable iron and a tartrate wherein said composition is free from carbon dioxide generating compounds. As the Office Action correctly states, the Aswell reference teaches an embodiment that includes iron powder as the oxygen reactive material, a water soluble acid and a water soluble carbonate to produce carbon dioxide. (col. 3, lines 51-60). Therefore, while Applicant claims a composition that does not include a carbon dioxide producing component, either in claim 1 or claim 23, Aswell teaches a composition including powdered iron, a water soluble acid and a water soluble carbonate. The reaction between the water soluble acid and the water soluble carbonate (the

carbon dioxide generating compound) produces carbon dioxide. In addition, with respect to claim 1, the Aswell reference teaches, discloses and suggests a composition not only the constituents oxidizable iron and a tartrate, but additional components as well. Therefore, in view of the above, Aswell cannot anticipate Applicant's claims 1 and 23, and claims dependent thereon, which may also be patentable for additional reasons as well.

### **Response to Prior Art Rejections based on Makino, JP '058, Ivanov and Tsao**

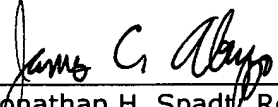
The Office Action rejects independent claims 1 and 23 as anticipated by Makino. Applicant respectfully submits, however, that the claimed invention is readily distinguishable from that disclosed by the cited reference. Applicant's amended claims 1 and 23 recite, as noted above, a composition consisting essentially of oxidizable iron and a tartrate. The form of iron as utilized in the claimed invention is such that it is oxidizable, or in other words, it is capable of absorbing oxygen. As noted in the Makino reference, "the invention provides a bivalent iron compound containing a bivalent iron salt...." (col. 1, lines 50-52). One of ordinary skill in the art would recognize that the form of iron disclosed in the Makino reference is not oxidizable iron, as required by the claimed invention. Therefore, Makino cannot anticipate independent claims 1 and 23, and claims dependent thereon, which may also be patentable for additional reasons as well.

With respect to JP '058, the abstract teaches dissolving ferrous salt in tartaric acid for a deodorizing effect. Ivanov, as the Office Action states, teaches a powder-like iron-sodium tartrate complex. Tsao, as the Office Action admits, teaches iron in the form of ferric chloride. Like Makino, the forms of iron disclosed by: JP '058 (ferrous salt), Ivanov (powder-like iron-sodium tartrate complex), and Tsao (ferric chloride), all do not include iron in an oxidizable form as is required by Applicant's claims. Each of these references teach an iron compound that does not have the ability to absorb oxygen. In fact, Tsao, as the Office Action admits, even teaches the inclusion of an oxygen-scavenging agent as one of its composition's constituents in addition to the ferric chloride. This is necessary because ferric chloride is not an oxidizable form of iron. For these reasons, Applicant contends that each of the above-noted references cannot anticipate amended claims 1 and 23, and claims dependent thereon, which may also be patentable for additional reasons as well.

## Conclusion

For all of the above reasons, Applicants respectfully submit that the rejections should all be withdrawn and all of pending claims 1-4, 7-10, 23-26, 29-32, 40-43, 46-49, 64-67 and 70-73 should be allowed.

Respectfully submitted,

  
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